PUBLIC PROSECUTOR

v.

TAN HOCK HAI

FEDERAL COURT, KUALA LUMPUR
RAJA AZLAN SHAH CJ (MALAYA)
ABDUL RAZAK J
EUSOFFE ABDOOLCADER J
[CRIMINAL APPEAL NO. 32 OF 1982]
1 NOVEMBER 1982

CRIMINAL LAW AND PROCEDURE: *Sentence - Trafficking in dangerous drugs - Death sentence - Unless in most exceptional circumstances.*

This was an appeal by the Public Prosecutor against the sentence of life imprisonment with whipping of 10 strokes imposed on the accused by the learned Judge of the High Court, Kuala Lumpur for an offence of trafficking in some 736.5 grammes of heroin under the Dangerous Drugs Act, 1952. The Public Prosecutor submitted that the sentence of death should be imposed in consonance with the earlier decisions of the Federal Court on the question of sentence for trafficking in dangerous drugs. The Federal Court was referred to the case of Beatrice Saubin, a twenty-two year old French girl who was convicted for trafficking in heroin and sentenced to death by the High Court, Penang which on appeal to the Federal Court was altered to imprisonment for life on the ground that there were extenuating circumstances in that case.

Held: Allowing the appeal:
[1] The Federal Court had said, and says again that the sentence of death should be imposed for trafficking in dangerous drugs other than in the most exceptional circumstances.

[2] There were no extenuating circumstances that would justify a classification of this case as most exceptional and therefore there was no justification for the sentence of life imprisonment imposed.

[3] The appeal by the Public Prosecutor against the sentence was allowed, the imposition of the term of imprisonment for life and the order of whipping set aside and the respondent was sentenced to death.

[Appeal allowed. Sentence of life imprisonment and whipping set aside. Respondent sentenced to death.]

Cases referred to:
Loh Hock Seng & Anor. v. Public Prosecutor [1980] 2 MLJ 13
Public Prosecutor v. Oo Leng Swee & Ors. [1981] 1 MLJ 247
Chang Liang Sang & 3 Ors. v. Public Prosecutor [1980] FC Crim App 15

Legislation referred to:
Dangerous Drugs Act 1952, s. 37(da)
Federal Constitution, art. 42

For the appellant - Shaik Daud, DPP
For the respondent - W.P. Leong; M/s. W.P. Leong & Partners

JUDGMENT

The learned Judge in this case did not sentence the appellant to death on conviction but imposed a term of imprisonment for life with whipping of 10 strokes. The Public Prosecutor appeals against the sentence and submits that the sentence of death should be imposed in consonance with the earlier decisions of the Court on the question of sentence for trafficking in dangerous drugs.

The respondent was charged and convicted for trafficking in some 736.5 grammes of heroin, a sizeable quantity particularly if it is borne in mind that the presumption of trafficking under s. 37 (da) of the Dangerous Drugs Act, 1952 arises in the case of possession of 100 grammes of the drug. We have made clear the position with regard to sentencing on conviction for trafficking in dangerous drugs. We have said, and we say again, that the sentence of death should be imposed for trafficking in dangerous drugs other than in the most exceptional circumstances. We trust that it will not be necessary to repeat in the future our observations in this matter in *Loh Hock Seng & Anor. v. Public Prosecutor* [1980] 2 MLJ 13; *Public Prosecutor v. Oo Leng Swee & Ors.* [1981] 1 MLJ 247 and *Chang Liang Sang & 3 Ors. v. Public Prosecutor* [1980] FC Crim App 15 in perhaps even more trenchant terms or at all.

We have been referred to the case of Beatrice Saubin, a twenty-two year old French girl who was convicted for trafficking in heroin and sentenced to death by the High Court which on appeal to this Court was altered to imprisonment for life on the grounds that there were extenuating circumstances in that case. As no reasons have been given, either oral or written, in that case we do not know what the extenuating circumstances found were and we can therefore only consider that case as one on its own particular facts and circumstances. We would however make it absolutely clear that a twenty-two year old foreign female courier who trafficks in heroin takes the same risk and does so at the same peril as a fifty-two year old local male counterpart, and the sex, age and origin of the offender would appropriately be more a matter for consideration in any application for clemency to the appropriate authority under Article 42 of the Federal Constitution.

In the case before us the respondent was convicted for trafficking in a large amount of heroin for a monetary motive and out of sheer greed. We find no extenuating circumstances that would justify a classification of this case as most exceptional and we therefore find no justification for the sentence of life imprisonment imposed.

We accordingly allow the appeal by the Public Prosecutor against the sentence, set aside the imposition of the term of imprisonment for life and the order for whipping and sentence the respondent to death.

Also found at [1983] 1 CLJ 25